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SCHOOL DISTRICT, TRENTON HANSEN, and
DANIEL BROOKS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JESSICA TAPIA, an individual,

Plaintiff,

v.

JURUPA UNIFIED SCHOOL
DISTRICT; TRENTON HANSEN,
both in his personal capacity and in his
official capacity as the Jurupa Unified
School District Superintendent;
DANIEL BROOKS, both in his
personal capacity and in his official
capacity as Jurupa Unified School
District Assistant Superintendent,

Defendants.

Case No.: 5:23-cv-00789-FMO-E

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS; MEMORANDUM OF
POINTS AND AUTHORITIES [FRCP
12(b)(6)]**

Date: September 21, 2023

Time: 10:00 a.m.

Place: Courtroom 6D

350 W. 1st Street

Los Angeles, CA 90012

Hon. Fernando M. Olguin, United States
District Judge

Magistrate Judge: Hon. Charles F. Eick

Action Date: May 3, 2023

Trial date: Not Set

TO THE CLERK OF THE COURT, AND TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 21, 2023, at 10:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 6D of the above-entitled court located at 350 W. First Street, Los Angeles, CA 90012, before the Honorable Fernando M. Olguin, Defendants JURUPA UNIFIED SCHOOL DISTRICT, TRENTON HANSEN, and DANIEL BROOKS, will and do hereby move the Court, pursuant to Fed. R. Civ. P. 12(b)(6) for dismissal of Plaintiff's Complaint, as follows:

(1) The First, Second, Third, and Sixth Causes of Action pursuant to 42 U.S.C. § 1983 must be dismissed with prejudice against individual defendants TRENTON HANSEN and DANIEL BROOKS, who are being sued both in their official and personal capacity. In their personal capacity, individual defendants TRENTON HANSEN and DANIEL BROOKS did not engage in a constitutional violation, and further, they are entitled to qualified immunity because Plaintiff has not alleged conduct by TRENTON HANSEN and DANIEL BROOKS which violated a clearly established statutory or constitutional right. In their official capacity, individual defendants TRENTON HANSEN and DANIEL BROOKS are entitled to sovereign immunity under the Eleventh Amendment.

(2) The First, Second, Third, and Sixth Causes of Action pursuant to 42 U.S.C. § 1983 must be dismissed with prejudice against JURUPA UNIFIED SCHOOL DISTRICT, because it is entitled to sovereign immunity under the Eleventh Amendment.

This Motion is based upon this Notice, the Memorandum of Points and Authorities, the pleadings and records in this Court's file, and upon such further matters as may be presented at or before the hearing on the Motion.

This Motion is made following a phone conversation with counsel for the Parties and exchanged e-mails, which occurred on July 19, 2023, July 20, 2023 and August 11,

1 2023, conducted pursuant to Local Rule 7-3 between Plaintiff's and Defendants'
2 counsel, where the issues set forth herein were thoroughly discussed without resolution.
3 At the conclusion of the August 11, 2023 exchange, the parties agreed this matter
4 requires the assistance of the Court.

5
6 Dated: August 18, 2023

Respectfully Submitted,
WALSH & ASSOCIATES, APC

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10 _____
Dennis J. Walsh, Esq.
11 Arash Arjang, Esq.
Attorneys for Defendants,
12 JURUPA UNIFIED SCHOOL
13 DISTRICT, TRENTON HANSEN,
14 and DANIEL BROOKS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL ALLEGATIONS**

3 **A. FACTUAL ALLEGATIONS IN THE COMPLAINT**

4 1. Ms. Tapia's Employment with the District

5 Plaintiff JESSICA TAPIA ("Ms. Tapia") challenges a number of directives
6 issued to her by her employer, JURUPA UNIFIED SCHOOL DISTRICT ("JUSD" or
7 "the District"). FAC, ¶1. Ms. Tapia was issued a notice of unprofessional conduct and
8 presented her with a "Plan of Assistance and Directives", which purportedly required
9 her to lie to parents about their children's gender identity, refer to them by their
10 preferred pronouns, refrain from expressing her religious beliefs with students or on her
11 social media, and allow students to use the bathroom or locker room that matched their
12 preferred sex. FAC, ¶¶ 3-5. Ms. Tapia was unable to comply with the directives due
13 to her religious beliefs and requested accommodations, which JUSD purportedly
14 refused to provide and subsequently terminated her employment with the District. FAC,
15 ¶ 6. Since 2014, Ms. Tapia worked for JUSD in varying capacities as a teacher, and in
16 2016, after obtaining her teaching credentials, she accepted a full-time teaching
17 position. FAC, ¶¶ 18-22. From 2017 to 2021, Ms. Tapia taught P.E. at Mira Loma
18 Middle School, where her Principal noted that she excelled as a teacher. FAC, ¶¶ 23-
19 25. In 2021, Ms. Tapia was transferred to Jurupa Valley High School and began
20 working as the sole female P.E. teacher, where she received positive evaluations. FAC,
21 ¶¶ 26-28.

22 2. Ms. Tapia's Religious Beliefs

23 As a Christian, Ms. Tapia believes that her religion holds that God created two
24 sexes: male and female. FAC, ¶ 29. As a result of her faith, she is precluded from
25 endorsing policies that cause her to reject her faith, such as facilitating a student's
26 gender transition or withholding information about it from the student's parents. FAC,
27 ¶ 30. Ms. Tapia believes that the relationship between parents and children was created
28

1 by God, and that requires parents to train up a child in the way he should go. FAC, ¶
 2 31. Ms. Tapia has not discussed her religious beliefs with students unless she is
 3 approached and asked questions about her faith, and she listens to worship music during
 4 P.E. classes, but keeps the sound at a minimum. FAC, ¶¶ 32-33. Ms. Tapia regularly
 5 posts quotes, Bible verses, and her religious beliefs on her personal social media pages,
 6 and does not identify herself as a teacher or an employee of the District, nor that they
 7 are representative of the District's. FAC, ¶ 34.

8 3. Events Leading to Ms. Tapia's Termination

9 Near the end of the 2021-2022 school year, Ms. Tapia received disturbing
 10 messages and comments on her Instagram account from Jurupa Valley High School
 11 students, and the next day, she was pulled out of classroom and was told that she needed
 12 to meet with Defendant Daniel Brooks ("Mr. Brooks"), Assistant Superintendent of
 13 Human Resources. FAC, ¶¶ 35-36. Mr. Brooks informed Ms. Tapia that issues had
 14 been brought to the District's attention regarding her social media posts, and that she
 15 was being placed on paid administrative leave. FAC, ¶ 37.

16 On July 29, 2022, Mr. Brooks, as authorized by Superintendent Trenton Hansen
 17 ("Mr. Hansen") sent Ms. Tapia unfounded allegations that the District was in receipt of
 18 and asked her to respond to them as part of an internal investigation. FAC, ¶ 38. The
 19 allegations were that the social media posts were racist, offensive, disrespectful, and
 20 mocking toward individuals based on their sexual orientation. FAC, ¶¶ 39-40. The
 21 allegations were a mischaracterization of who Ms. Tapia is, where her faith requires her
 22 to love all people, regardless of sexual orientation. FAC, ¶¶ 41-43. JUSD also accused
 23 her of proselytizing during P.E. classes, and not calling a student by the student's
 24 preferred pronoun. FAC, ¶¶ 44-47. After disputing the accusations through her union
 25 representative, on or about September 30, 2022, Ms. Tapia attended a meeting with her
 26 union representative where she received a Notice of Unprofessional Conduct from Mr.
 27 Brooks, which was authorized by Mr. Hansen. FAC, ¶¶ 48-52. JUSD advised Ms.

1 Tapia that her conduct constituted violation of Education Code 220, and JUSD's Board
 2 Policies 5145.3, 5145.9, and 4119.21, which prohibit discrimination and harassment,
 3 intimidation, bullying, and behavior that is motivated by hate, among other directives.
 4 FAC, ¶¶ 53-57.

5 JUSD allowed Ms. Tapia to cure her deficiencies by directing her to (1) refer to
 6 students by their preferred gender pronouns, (2) refrain from publicly posting her faith
 7 and opinions on social media, and (3) refrain from discussing her religious beliefs or
 8 the Bible with students, (4) agree to treat students with respect and dignity, (5) use good
 9 judgment when interacting with students, (6) act in a professional manner at work, (7)
 10 comply with Board Policies and Education Code § 220, (8) withhold information from
 11 parents about their student's preferred pronoun, (9) allow transgender students to use
 12 the bathroom or locker room that matches their preferred sex. (FAC, ¶¶ 58-65.) These
 13 directives caused Ms. Tapia to choose between her job and violating her religious
 14 beliefs, causing her to go out on medical leave. (FAC, ¶ 66-67.)

15 On December 19, 2022, Ms. Tapia, through her union, informed JUSD that she
 16 could not comply with the Directives. (FAC, ¶ 68, Exhibit C.) With respect to Directive
 17 # 1, Ms. Tapia wrote:

18 "Addressing students by their preferred name and preferred gender
 19 pronouns. Staying true to my faith and beliefs, I can and will only refer to
 20 students by the name and gender/pronouns provided by their parents/legal
 21 guardians on school paperwork during enrollment, which is provided to
 22 me on my rosters/attendance sheets. **The lies and confusion that children**
 23 **are fed in terms of "you aren't who you were created to be" is based**
 24 **in evil and I will not take part in that. I believe that God created male**
 25 **and female.** I also believe that God is love and defines love. Therefore,
 the best thing that I can do to support students and equip them for a bright
 future is to love and encourage them in who they were created to be, **and**
that is what they were born as, either male or female. (FAC, Exhibit
 C.) (Emphasis added.)

26 With respect to Directive # 2, Ms. Tapia wrote:

27 **"Refrain from publicly posting content on your social media pages**
 28

1 **that adversely affects your relationships with students...** I do not have
 2 control over what a student can find on social media and what they will
 3 decide to be affected by. It is my constitutional right to share my beliefs,
 4 opinions, and stances on my personal pages if that is what I choose to do.
 5 I do not post content directed at or about students. I believe we can all
 6 agree that there is always someone offended in today's day and age, no
 7 matter what is said or done. I believe we ought to be teaching students what
 8 real life looks like: varying beliefs and opinions that don't always match
 9 our own, **however that does not mean we need to take someone's belief
 10 and allow it to affect us personally.** (FAC, Exhibit C.) (Emphasis added.)

11 With respect to Directive # 3, Ms. Tapia wrote:

12 “Refrain from discussing religious beliefs or the Bible with students
 13 I serve, follow, and work for the Lord above all else. He has called me to
 14 be prepared with an answer for the hope I have, for anyone who comes
 15 asking. Therefore, if and when a student feels safe and comfortable enough
 16 to come to me with a faith-based question as has happened in the past, I
 17 will provide an answer for them. I will not "preach to" or "pray" with them,
 18 but I will do my best to provide them with the answer they are searching
 19 for. There could very well be no other person in this child's life to help
 20 them navigate this and **God has called me to share the truth without
 21 wavering.**” (FAC, Exhibit C.) (Emphasis added.)

22 Ms. Tapia concluded by stating:

23 Last but far from least, the directive I was given vocally at our last meeting
 24 on September 30, 2022, but I am not seeing or locating in writing, which
 25 is: "to withhold information and lie to parents about their student's
 26 name/gender/pronoun preference". This is unfathomable to me. In
 27 Education Code section 44932 (4) it states that I can be dismissed for
 28 "dishonesty". However, dishonesty is okay, as a matter of fact expected of
 me, in the unique circumstance of speaking with a parent who has a child
 with gender dysphoria. **I will not purposely lie and withhold
 information from parents about their child, as I am a parent myself
 and would be furious if this was done to me. This is infringing upon
 parental rights.** (FAC, Exhibit C.) (Emphasis added.)

Although Ms. Tapia offered potential accommodations, on or about January 18, 2023,
 the District determined that it could not accommodate Ms. Tapia's religious beliefs

1 without violating California and federal law, “aimed at protecting students and
 2 providing all students, a discrimination and harassment free learning environment”,
 3 which was purportedly without justification, and was purportedly arbitrary and
 4 discriminatory. FAC, ¶¶ 75-93.

5 On January 30, 2023, JUSD released Ms. Tapia from employment because she
 6 was unwilling to agree to the Directives that violated her sincerely held religious beliefs,
 7 because the District was unable to accommodate her beliefs. FAC, ¶¶ 95-101.

8 **B. SUMMARY OF RELEVANT STATE AND FEDERAL**
 9 **LAWS/EXECUTIVE ORDERS IN PLACE AS RELATED TO**
 10 **TRANSGENDER STUDENTS**

11 The District respectfully requests from this Court to take judicial notice of the
 12 following pertinent state and federal laws/executive orders in place, in relation to
 13 transgender students.

14 1. California Education Code § 35183(a)(1), states in pertinent part: “The
 15 children of this state have the right to an effective public school education. Both students
 16 and staff of the primary, elementary, junior and senior high school campuses have the
 17 **constitutional right to be safe and secure in their persons at school.**”

18 2. California Education Code § 200, states in pertinent part: “It is the policy
 19 of the State of California to **afford all persons in public schools**, regardless of their
 20 disability, **gender, gender identity, gender expression**, nationality, race or ethnicity,
 21 religion, sexual orientation, or any other characteristic that is contained in the definition
 22 of hate crimes set forth in Section 422.55 of the Penal Code, including immigration
 23 status, **equal rights, and opportunities** in the educational institutions of the state.”

24 3. California Education Code § 201(a) states that “[a]ll pupils have the right
 25 to participate fully in the educational process, free from discrimination and
 26 harassment.” California Education Code § 201(b) states that “California’s public
 27 schools have an affirmative obligation to combat racism, **sexism, and other forms of**
 28

1 **bias**, and a responsibility to **provide equal educational opportunity.**” California
 2 Education Code § 201(d) states that “[t]here is an urgent need to prevent and respond
 3 to **acts of hate violence and bias-related incidents** that are occurring at an increasing
 4 rate in California’s public schools.” California Education Code § 201(e) states that
 5 “[t]here is an urgent need to teach and inform pupils in the public schools about their
 6 rights, as guaranteed by the federal and state constitutions, in order to increase pupils’
 7 awareness and understanding of their rights and the rights of others, with the intention
 8 of **promoting tolerance and sensitivity in public schools** and in society as a means of
 9 responding to potential harassment and hate violence.” Furthermore, “[i]t is the intent
 10 of the Legislature that each public school undertake educational activities to counter
 11 discriminatory incidents on school grounds and, within constitutional bounds, **to**
 12 **minimize and eliminate a hostile environment on school grounds** that impairs the
 13 access of pupils to equal educational opportunity.” California Education Code § 201(f).

14 4. California Education Code § 210.7 defines “gender” to include “a person’s
 15 gender-related appearance and behavior **whether or not stereotypically associated**
 16 **with the person’s assigned sex at birth.**”

17 5. California Education Code § 220 states that “[n]o person shall be subjected
 18 to discrimination on the basis of disability, **gender, gender identity, gender**
 19 **expression**, nationality, race or ethnicity, religion, sexual orientation, or any other
 20 characteristic that is contained in the definition of hate crimes set forth in Section 422.55
 21 of the Penal Code, including immigration status, in any program or activity conducted
 22 by an educational institution that receives, or benefits from, state financial assistance,
 23 or enrolls pupils who receive state student financial aid.”

24 6. California Education Code § 221.5(a) states that “[i]t is the policy of the
 25 state that elementary and secondary school classes and courses, including nonacademic
 26 and elective classes and courses, be conducted, without regard to the sex of the pupil
 27 enrolled in these classes and courses.” California Education Code § 221.5(f) states that
 28

1 “[a] pupil shall be permitted to participate in sex-segregated school programs and
 2 activities, including athletic teams and competitions, **and use facilities consistent with**
 3 **his or her gender identity, irrespective of the gender listed on the pupil's records.”**

4 7. California Education Code § 233.5(a) states that “[e]ach **teacher shall**
 5 **endeavor to impress upon the minds of the pupils the principles of morality, truth,**
 6 **justice**, patriotism, and a true comprehension of the rights, duties, and dignity of
 7 American citizenship, and the meaning of **equality and human dignity, including the**
 8 **promotion of harmonious relations**, kindness toward domestic pets and the humane
 9 treatment of living creatures, to teach them to avoid idleness, profanity, and falsehood,
 10 and to instruct them in manners and morals and the principles of a free government.”
 11 California Education Code § 233.5(b) states that “[e]ach teacher is also encouraged to
 12 create and foster an environment that encourages pupils to realize their full potential
 13 and that is **free from discriminatory attitudes, practices**, events, or activities, in order
 14 to prevent acts of hate violence, as defined in subdivision (e) of Section 233.”

15 8. California Education Code § 234.1 **mandates** that school **districts adopt**
 16 **a policy prohibiting discrimination, harassment, intimidation and bullying** based
 17 on the above categories at school or in any school activity related to school attendance
 18 or under the authority of the district. **California Education Code §234.1 further**
 19 **requires districts to adopt a process requiring school personnel to immediately**
 20 **intervene**, when it is safe to do so, **whenever they witness acts of discrimination,**
 21 **harassment, intimidation or bullying** based on the characteristics specified in
 22 Education Code sections 220 or 234.1 or Penal Code Section 422.55, **including gender**
 23 **identity.**

24 9. California Constitution, Article I, § 1, states that “[a]ll people are by nature
 25 free and independent and have inalienable rights. Among these are enjoying and
 26 defending life and liberty, acquiring, possessing, and protecting property, and pursuing
 27 and obtaining safety, happiness, and privacy.”

10. California Constitution, Article I, § 28(a)(7) states that “the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where **students and staff have the right to be safe and secure in their persons.**” California Constitution, Article I, § 28(f)(1) states that the People of California hold these rights: “Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.”

11. The California Department of Education has released an FAQ, to assist school districts with understanding and implementing policy changes related to AB 1266 and transgender student privacy, facility use, and participation in school athletic competitions. The FAQ states, in pertinent part, as follows:

6. May a student’s gender identity be shared with the student’s parents, other students, or members of the public?

A transgender or gender nonconforming student may not express their gender identity openly in all contexts, including at home. **Revealing a student’s gender identity or expression to others may compromise the student’s safety. Thus, preserving a student’s privacy is of the utmost importance. The right of transgender students to keep their transgender status private is grounded in California’s antidiscrimination laws as well as federal and state laws.** Disclosing that a student is transgender without the student’s permission may violate California’s antidiscrimination law by increasing the student’s vulnerability to harassment and may violate the student’s right to privacy.

7. What steps should a school or school district take to protect a transgender or gender nonconforming student’s right to privacy?

Pursuant to the above protections, schools must consult with a transgender student to determine who can or will be informed of the student’s transgender status, if anyone, including the student’s family. **With rare exceptions, schools are required to respect the limitations that a**

1 **student places on the disclosure of their transgender status, including**
 2 **not sharing that information with the student's parents.** In those very
 3 rare circumstances where a school believes there is a specific and
 4 compelling "need to know," the school should inform the student that the
 5 school intends to disclose the student's transgender status, giving the
 6 student the opportunity to make that disclosure her or himself.
 7 Additionally, schools must take measures to ensure that any disclosure is
 8 made in a way that reduces or eliminates the risk of re-disclosure and
 9 protects the transgender student from harassment and discrimination.
 Those measures could include providing counseling to the student and the
 student's family to facilitate the family's acceptance and support of the
 student's transgender status...

10 8. What is a school or school district's obligation when a student's stated
 11 gender identity is different than the student's gender marker in the school's
or district's official records?

12 **If a student so chooses, district personnel shall be required to address**
 13 **the student by a name and the pronouns consistent with the student's**
 14 **gender identity, without the necessity of legal documentation or a**
 15 **change to the student's official district record.** The student's age is not
 16 a factor. For example, children as early as age two are expressing a
 17 different gender identity. It is strongly suggested that teachers privately ask
 18 transgender or gender nonconforming students at the beginning of the
 school year how they want to be addressed in class, in correspondence to
 the home, or at conferences with the student's parents.

19 **If a member of the school community intentionally uses a student's**
 20 **incorrect name and pronoun, or persistently refuses to respect a**
 21 **student's chosen name and pronouns, that conduct should be treated**
 22 **as harassment.** That type of harassment can create a hostile learning
 23 environment, violate the transgender student's privacy rights, and
 24 increase that student's risk for harassment by other members of the
 25 school community. Examples of this type of harassment include a teacher
 26 consistently using the student's incorrect name when displaying the
 27 student's work in the classroom, or a transgender student's peers referring
 to the student by the student's birth name during class, but would not
 include unintentional or sporadic occurrences. **Depending on the**
circumstances, the school's failure to address known

incidents of that type of harassment may violate California's antidiscrimination laws.

12. Following the events surrounding Ms. Tapia, Assembly member, Bill Essayli (R-Riverside), sponsored Assembly Bill 1314 (Titled Gender identity: parental notification), which provides in part that a parent or guardian has the right to be notified in writing within 3 days from the date any teacher, counselor, or employee of the school becomes aware that a pupil is identifying at school as a gender that does not align with the child's sex on their birth certificate, other official records, or sex assigned at birth, using sex-segregated school programs and activities, including athletic teams and competitions, or using facilities that do not align with the child's sex on their birth certificate, other official records, or sex assigned at birth. The assembly bill is currently referred to the Committee on Education.

13. On March 8, 2021, President Biden issued Executive Order 14021, which stated, in pertinent part: "It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and **including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified**, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., **which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.**"

14. On June 22, 2021, the U.S. Department of Education issued a Policy Letter on Transgender Students, explaining how schools are required to treat transgender students under Title IX. Under this policy, all schools, including K-12 schools, which receive federal funding, will be subject to the requirements of Title IX, and the Department's Office for Civil Rights is responsible for investigating complaints made

1 by students and parents.

2 15. The United States Department of Education has published an Education
3 Toolkit that includes examples of policies and practices that schools and districts can
4 consider developing to support LGBTQI+ students and families. One of the suggestions
5 includes: “**Facilitating opportunities for students to find support from peers,**
6 **teachers, and staff**, such as student-led organizations, and identifying supportive
7 spaces on campus.”

8 Consistent with the state and federal laws and regulations and the Executive
9 Order, JUSD also has Board Policies, as follows:

10 16. Board Policy 5145.9 states that the Governing Board is committed to
11 providing a respectful, inclusive, and safe learning environment that protects students
12 from discrimination, harassment, intimidation, bullying, or any other type of behavior
13 that is motivated by hate, and defines hate-motivated behavior is any behavior intended
14 to cause emotional suffering, physical injury, or property damage through ...
15 intimidation, harassment... motivated in part or in whole by bias or hostility toward the
16 victim's real or perceived... sex, sexual orientation, gender, gender identity, gender
17 expression, or genetic information.”

18 17. Board Policy 5145.3, titled Nondiscrimination/Harassment, states that the
19 policy applies to all acts constituting unlawful discrimination or harassment related to
20 school activity or to school attendance occurring within a district school, **and to acts**
21 **which occur off campus or outside of school-related or school-sponsored activities**
22 **but which may have an impact or create a hostile environment at school.**

23 **II. LEGAL STANDARD**

24 **A. MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(6)**

25 Pursuant to Fed. R. Civ. P. 12(b)(6), a pleading may be dismissed if the pleading
26 fails “to state a claim upon which relief can be granted.” A Rule 12(b)(6) motion for
27 dismissal is proper where there is either a “lack of a cognizable legal theory” or “the
28

1 absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
2 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

3 The complaint “must [provide] sufficient allegations of underlying facts to give
4 fair notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*,
5 652 F.3d 1202, 1216 (9th Cir. 2011). Furthermore, the underlying factual allegations
6 must “plausibly suggest an entitlement to relief.” *Id.*; *see also, Caltex Plastics, Inc. v.*
7 *Lockheed Martin Corporation*, 824 F.3d 1156, 1159 (9th Cir. 2016). To survive a
8 motion to dismiss, a complaint must contain “sufficient factual matter to state a facially
9 plausible claim.” *Shroyer v. New Cingular Wireless Services, Inc.*, 622 F.3d at 1041
10 (9th Cir. 2010).

11 “[T]here is no reason not to grant a motion to dismiss where the undisputed facts
12 conclusively establish an affirmative defense as a matter of law.” *Hensley Mfg. v.*
13 *ProPride, Inc.*, 579 F.3d 603, 613 (6th Cir. 2009). Where a court grants a Rule 12(b)(6)
14 motion based on an affirmative defense, the facts establishing that defense must: (1) be
15 definitively ascertainable from the complaint and other allowable sources of
16 information, and (2) suffice to establish the affirmative defense with certitude. *Gray v.*
17 *Evercore Restructuring L.L.C.*, 544 F.3d 320, 324 (1st Cir. 2008).

18 The general rule is that a district court, in ruling on a Rule 12(b)(6) motion, cannot
19 consider materials outside of the complaint. However, there are exceptions to this general
20 rule. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *Khoja v. Orexigen*
21 *Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018), cert. denied sub nom. *Hagan v.*
22 *Khoja* (U.S., May 20, 2019, No. 18-1010) 2019 WL 429555. In ruling on a Rule
23 12(b)(6) motion, courts may consider documents attached to the complaint, judicially
24 noticed documents, and documents that were incorporated by reference in the pleading.
25 *See U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *Van Buskirk v. CNN*, 284 F.3d
26 977, 980 (9th Cir. 2002); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). Courts
27 can expand the facts and inferences from the complaint with “data points gleaned from
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documents incorporated by reference into the complaint, matters of public record, and facts susceptible to judicial notice.” *Haley v. City of Boston*, 657 F.3d 39, 46 (1st Cir. 2011). Moreover, “[a] copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” Federal Rules of Civil Procedure, Rule 10(c). “[A] general description of an exhibit attached to a complaint will be disregarded where inconsistent with the exhibit.” *B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 953. “Exhibits attached to the complaint take precedence to the extent they contradict allegations in the complaint.” *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 943 [214 Cal.Rptr.3d 504, 510], as modified (Mar. 1, 2017). “When a written instrument contradicts allegations in a complaint to which it is attached, *the exhibit trumps the allegations.*” *Thompson v. Illinois Dept. of Prof. Reg.*, 300 F.3d. 750, 754 (7th Cir. 2002) (emphasis in original; internal quotes omitted); *Sprewell v. Golden State Warriors*, 266 F.3d. 979, 988 (9th Cir. 2001). Furthermore, courts may disregard allegations in a complaint if such allegations “conflict with the legal effect of...judicially noticeable exhibits and documents in the public record.” *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 38 [214 Cal.Rptr.3d 292, 304], reh’g denied (Feb. 22, 2017), review denied (May 10, 2017). Plainly speaking, courts can disregard allegations in the complaint if they are contradicted by claims in the exhibits to the complaint. *Nishimatsu Const. Co., Ltd. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975).

III. PLAINTIFF’S FIRST, SECOND, THIRD, AND SIXTH CAUSES OF ACTION FOR VIOLATION OF CIVIL RIGHTS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

A. DEFENDANTS TRENTON HANSON AND DANIEL BROOKS ARE ENTITLED TO QUALIFIED IMMUNITY

“Individual defendants sued in their personal capacities may be liable for damages under Section 1983, if the doctrine of qualified immunity does not apply.”

1 *Harper v. Poway Unified School District*, 345 F.Supp. 1096, 1116 (S.D. Cal. 2004),
2 citing *Price v. Akaka*, 928 F.2d 824, 828, (9th Cir. 1990); *Cerrato v. San Francisco*
3 *Community College Dist.*, 26 F.3d 968, 973, n. 16 (9th Cir. 1994). “Qualified immunity
4 protects government officials ‘from liability for civil damages insofar as their conduct
5 does not violate clearly established statutory or constitutional rights of which a
6 reasonable person would have known.’” *Pearson v. Callahan*, 555 U.S. 223, 231
7 (2009). Qualified immunity applies regardless of whether the government official’s
8 error is “a mistake of law, a mistake of fact, or a mistake based on mixed questions of
9 law and fact.” *Groh v. Ramirez*, 540 U.S. 551, 567 (2004). The doctrine of qualified
10 immunity protects government officials “from liability for civil damages insofar as their
11 conduct does not violate clearly established statutory or constitutional rights of which a
12 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
13 It “gives government officials breathing room to make reasonable but mistaken
14 judgments,” and “protects ‘all but the plainly incompetent or those who knowingly
15 violate the law’” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v.*
16 *Briggs*, 475 U.S. 335, 341 (1986).) “The offending official, so long as he conducts
17 himself in good faith, may go about his business secure in the knowledge that a qualified
18 immunity will protect him from personal liability for damages that are more
19 appropriately chargeable to the populace as a whole.” *Owen v. City of Independence,*
20 *Mo.* (1980) 445 U.S. 622, 657.

21 Both the Supreme Court and the Ninth Circuit have consistently held that the
22 doctrine of qualified immunity shields “government officials performing discretionary
23 functions ... from liability for civil damages ...” *Lytle v. Wondrash*, 182 F.3d 1083,
24 1086, (9th Cir. 1999); *Harlow v. Fitzgerald*, 457 U.S. 800, 818, (1982); *Downing v.*
25 *West Haven Board of Ed.*, 162 F.Supp.2d 19, 29-30, (2001); *Harper, supra*, 345 F.Supp.
26 at 1117, citing *Hunter v. Bryant*, 502 U.S. 224, 229, (1991). In *Harlow v. Fitzgerald*,
27 the court held that “government officials performing discretionary functions generally
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1 are shielded from liability for civil damages insofar as their conduct does not violate
2 clearly established statutory or constitutional rights of which a reasonable person would
3 have known.” *Harlow, supra*, 457 U.S. at 818. In *White v. Pauly*, 137 S.Ct. 548, 552
4 (2017) (per curiam), the Supreme Court held that “clearly established law” should not
5 be defined at a high level of generality and must be particularized to the facts of the
6 case. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (citation omitted). “For a
7 constitutional right to be clearly established, its contours must be sufficiently clear that
8 a reasonable official would understand that what he is doing violates that right.”
9 *Mansourian v. Board of Regents of the University of California at Davis* (E.D. Cal.
10 2010) 757 F.Supp.2d 1030, 1048 quoting *Hope v. Pelzer* 536 U.S. 730, 739 (2002)
11 (internal quotation marks omitted).

12 Because it is an immunity from suit, whether qualified immunity applies should
13 be determined by the Court at the earliest stage possible. *See, Martinez v. Cty. of Los*
14 *Angeles*, 47 Cal. App. 4th 334 (1996), citing *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)
15 (“Immunity should ordinarily be resolved by the court, not a jury.”)

16 Ms. Tapia was a teacher employed by JUSD, a public entity, and she has made
17 fatal admissions in her complaint, specifically in Exhibit “C” of her FAC, wherein she
18 admits that her religious beliefs mandated her to violate several provisions of state and
19 federal laws and regulations. Specifically, Ms. Tapia wrote to the District that she
20 would “only refer to students by the name and gender/pronouns provided by their
21 parents/legal guardians on school paperwork during enrollment.” (FAC, Exh. C.) Ms.
22 Tapia’s refusal to abide by the directive to refer to students by their preferred pronoun
23 results in a violation of California Education Code §§ 200 and 201 because her refusal
24 would constitute harassment under California’s anti-discrimination laws, as determined
25 by the California Department of Education. (See Request for Judicial Notice (“RJN”),
26 Exh. 8, FAQ No. 8). Furthermore, this type of harassment can also create a hostile
27 learning environment, would violate the transgender student’s privacy rights, and
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1 increase that student's risk for harassment by other members of the school community.
2 *Id.* Furthermore, as determined by the United States Department of Education, and
3 based on President Biden's Executive Order 14021, the District could face liability for
4 violation of Title IX, and would result in loss of federal funding. (See RJN, Exh. 13-
5 15.) Not only would JUSD potentially face loss of federal funding if it allowed Ms.
6 Tapia to continue violating this directive, it could also face anti-discrimination lawsuits
7 by transgender students and their parents for multiple violations of state and federal
8 anti-discrimination laws.

9 Furthermore, Ms. Tapia refused to abide by the District's directive to affirm a
10 child's preferred gender and allow them to use the locker room or bathroom of their
11 choice. FAC, ¶ 62, 67, 84. Ms. Tapia's refusal to abide by this directive was a direct
12 violation of California Education Code § 210.7 and § 221.5(f), which states that "[a]
13 pupil shall be permitted to participate in sex-segregated school programs and activities,
14 including athletic teams and competitions, and use facilities consistent with his or her
15 gender identity, irrespective of the gender listed on the pupil's records."

16 Furthermore, in response to Directive No. 2 to refrain from posting content on
17 social media pages that would adversely affect relationship with her students, Ms. Tapia
18 specifically wrote to the District that she refused to do so, claiming that her posts were
19 not directed to the students, and varying beliefs and opinions do not always match
20 someone else's belief. By refusing to refrain from posting offensive content about
21 transgender students on her social media account (i.e. Instagram), Ms. Tapia violated
22 California Education Code §§ 201, 220, 210.7, 221.5(a), 233.5(a), California
23 Constitution, Article I, § 28(a)(7) and 28(f)(1), and Title IX, as determined by President
24 Biden's Executive Order 14021, and the United States Department of Education. (See
25 Request for Judicial Notice 13, and 14.)

26 Ms. Tapia further refused to refrain from discussing her religious beliefs, and also
27 made it clear in her letter to the District that she would not withhold information from
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1 parents about their child, if the child identified as a transgender student. FAC, ¶¶ Exh.
2 C. By refusing to comply with the District's directive in respecting the privacy rights
3 of transgender students, Ms. Tapia was in direct violation of transgender student privacy
4 rights, as determined by the California Department of Education. (See RJN, Exh. 11.)
5 In summary, Ms. Tapia has admitted in her complaint that her religious beliefs
6 compelled her to violate state and federal laws, regulations, and an executive order from
7 the President of the United States, which would result in lawsuits from transgender
8 students and their parents, investigations by both the United States Department of
9 Education, Office of Civil Rights, (which would potentially lead to cutting of the
10 District's federal funds), and further investigation from the California Department of
11 Education. Ms. Tapia's religious beliefs and her refusal to comply with the District's
12 directives essentially turned her into a walking liability for both the District, and also
13 for the entire set of staff and students at JUSD who could potentially face loss of federal
14 funding if the school administrators did not take action to correct her behavior.

15 Faced with these concerns, individual defendants Mr. Hansen and Mr. Brooks,
16 who were the Superintendent and Assistant Superintendent at JUSD, had to act
17 immediately to address Ms. Tapia's conduct, which had resulted in several students
18 filing a complaint with the District. In compliance with their duties, Mr. Hansen and
19 Mr. Brooks carried out their responsibilities under Board Policy 5145.9 and 5145.3 to
20 investigate the complaints from the students against Ms. Tapia and correct her behavior.
21 As Plaintiff admits in her complaint, she was given a chance to comply with the
22 directives, and as admitted by Ms. Tapia, she refused to comply with the state and
23 federal laws and the Executive Order in place. Mr. Hansen and Mr. Brook's decision
24 to terminate Plaintiff's employment with JUSD was objectively reasonable, because
25 Plaintiff continued to insist that her religious beliefs mandated her to violate federal and
26 California state laws. It is important to note that at the time these events took place,
27 Assembly Bill 1314 was not even introduced, and the legislation is still pending review
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1 by the Education Committee. (RJN, Exh. 12.)

2 Once a government official asserts qualified immunity, “the district court must
3 determine whether, in light of clearly established principles governing the conduct in
4 question, the officer objectively could have believed that his conduct was lawful.” *Act*
5 *Up!/Portland v. Bagley*, 988 F.2d 868, 871 (9th Cir.1993). This requires a two-step
6 analysis: “1) Was the law governing the official's conduct clearly established? 2) Under
7 that law, could a reasonable officer have believed the conduct was lawful?” *Id.* An
8 official is entitled to qualified immunity even where reasonable officers could disagree
9 as to the lawfulness of the official's conduct, so long as that conclusion is objectively
10 reasonable. *Id.* at 872.

11 Here, it was entirely reasonable, from an objective standard, for Mr. Hansen and
12 Mr. Brooks to give an opportunity to Ms. Tapia to correct her actions. When that failed,
13 and when Ms. Tapia made it clear that she would continue to violate state and federal
14 laws, it was entirely reasonable for Mr. Hansen and Mr. Brooks to terminate Ms. Tapia’s
15 employment. In fact, if Mr. Hansen and Mr. Brooks did not take any action, the
16 transgender students and their parents could file a lawsuit against the District for
17 violation of California’s anti-discrimination laws, as determined by the California
18 Department of Education. (RJN, Exh. 11.) Furthermore, an investigation by the Office
19 of Civil Rights into the complaints, and a determination that Mr. Hansen and Mr. Brooks
20 failed to take action, could result in loss of federal funding to JUSD, which would be
21 detrimental to all the students and staff.

22 Here, the Plaintiff relies only on a broad due process right, right of free speech
23 and free exercise, and first amendment retaliation, to justify her claim that she should
24 have been admitted to continue to violate state and federal laws and regulations because
25 of her religious beliefs. These vague references to her constitutional rights are clearly
26 not applicable to the facts of this case, in that a reasonable official would find the
27 unlawfulness of her conduct to be apparent. Both the California statutes, and federal
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1 laws and regulations, along with the Board Policies that JUSD has in place, required
 2 and mandated Mr. Hansen and Mr. Brooks to take whatever steps were necessary to
 3 protect the rights of the transgender students.

4 As the Supreme Court has noted, “[t]he central purpose of affording public
 5 officials qualified immunity from suit is to protect them ‘from undue interference with
 6 their duties and from potentially disabling threats of liability.’” *Harlow v.*
 7 *Fitzgerald*, 457 U.S. 800, 806 (1982). Mr. Hansen and Mr. Brooks are
 8 entitled to qualified immunity against Plaintiff’s § 1983 claims. Again, the Court’s
 9 objective inquiry is whether “the officers’ actions [were] ‘objectively reasonable’ in
 10 light of the facts and circumstances confronting them, without regard to their underlying
 11 intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989). Because Mr.
 12 Hansen and Mr. Brooks’ actions were reasonable, they are entitled to the protection
 13 of qualified immunity.

14 **B. TRENTON HANSON AND DANIEL BROOKS AND JURUPA**
 15 **UNIFIED SCHOOL DISTRICT ARE ENTITLED TO ELEVENTH**
 16 **AMENDMENT IMMUNITY**

17 It has long been clearly established that public K-14 educational institutions in
 18 California, which includes school districts, are state agencies for purposes of Eleventh
 19 Amendment sovereign immunity. (*Mitchell v. Los Angeles Community College District*,
 20 861 F.2d 198, 201 (9th Cir. 1988), *cert. denied* (community college districts); *Sato v.*
 21 *Orange County Dep’t of Education*, 861 F.3d 923, 934 (9th Cir. 2017) (school districts
 22 and county offices of education); *Eaglesmith v. Ward*, 73 F.3d 857 (9th Cir. 1995)
 23 (county offices of education); *Belanger v. Madeira Unified Sch. Dist.*, 963 F.2d 248
 24 (9th Cir. 1992) (school districts).) Plaintiff therefore has not and cannot state a claim
 25 against the Defendants (against JUSD and the individual defendants in their official
 26 capacity) under any of the causes of action asserted on constitutional grounds or
 27 pursuant to 42 U.S.C. § 1983. A sovereign immunity defense is quasi-jurisdictional and
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1 therefore may be raised in either a Rule 12(b)(6) or a Rule 12(b)(1) motion. (*Sato*, 861
2 F.3d 923, 927 n. 2.)

3 School Districts are state entities that possess Eleventh Amendment immunity
4 from Section 1983 claims in damages and for injunctive relief. *Mitchell v. Los Angeles*
5 *Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988). The individual defendants
6 share in the JUSD's Eleventh Amendment immunity when they are sued in their official
7 capacities. *Id.* There is an exception to this general rule, however, that an official-
8 capacity suit is not barred by the Eleventh Amendment when the suit is brought for
9 prospective injunctive relief. *Doe v. Lawrence Livermore Nat. Laboratory*, 131 F.3d
10 836, 839 (9th Cir. 1997) (citing *Ex Parte Young*, 209 U.S. 123 (1908)). The exact relief
11 Plaintiff requests in her Complaint has been held by the U.S. Supreme Court, and the
12 9th Circuit Court of Appeals, as official-capacity suits that are not barred by the
13 Eleventh Amendment. *Lawrence Livermore*, 131 F.3d at 839; *Couer d'Alene Tribe of*
14 *Idaho*, 521 U.S. at 294; *Will*, 491 U.S. at 71 n.10 (1989); *Ex Parte Young*, 209 U.S. 123
15 (1908); *Goodisman*, 724 F.2d at 820. However, the *Ex parte Young* doctrine does not
16 apply to the JUSD and its Superintendent and Assistant Superintendent. These entities
17 are not subject to suit under Section 1983, for any form of relief, because they are state
18 agencies for purposes of the Eleventh Amendment, and as such, therefore are not
19 "persons" who are subject to suit within the statutory meaning of Section 1983. *Will v.*
20 *Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). Therefore, all 1983 claims
21 against JUSD and the individual defendants must be dismissed.

22 Dated: August 18, 2023

Respectfully Submitted,
WALSH & ASSOCIATES, APC

24 

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